Supreme Court, U.S.
FILED
MAR 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1341

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1985

PERRY JOHNSON, Director
Michigan Department of Corrections,
and GLORIA RICHARDSON, Superintendent,
Huron Valley Women's Facility,

Petitioners,

v

GEORGIA D. MANZIE,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

RICHARD A. SOBLE
3000 Cadillac Tower
Detroit, MI 48226-3889

(313) 965-0050

Counsel for Respondent

QUESTIONS PRESENTED FOR REVIEW

I.

DOES THE DOCTRINE OF COLLATERAL ESTOPPEL PRECLUDE A RE-DETERMINATION OF RESPONDENT'S STATUS AS A PREVAILING PARTY WHEN SUCH STATUS WAS DETERMINED WITHOUT ANY OBJECTION OF PETITIONERS AT AN EARLIER STAGE IN THE LAWSUIT?

II.

DID THE TRIAL COURT AND THE COURT OF APPEALS HOLDING THAT RESPONDENT'S SUCCESS IN ESTABLISHING PETITIONERS' VIOLATION OF HER CONSTITUTIONAL RIGHTS ENTITLE HER TO ATTORNEY FEES AS A PREVAILING PARTY UNDER 42 U.S.C. §1988?

III.

AFTER FINDING RESPONDENT TO BE THE PREVAILING PARTY, DID THE DISTRICT COURT PROPERLY EXERCISE ITS DISCRETION IN REDUCING RESPONDENT'S FEE BY 77% FROM THE AMOUNT REQUESTED PURSUANT TO THE HENSLEY v ECKERHART REQUIREMENT THAT THE FEE AWARD TAKE INTO ACCOUNT THE DEGREE OF SUCCESS?

TABLE OF CONTENTS

Table of authorities i

Summary of Argument iii

Statement of the Case 1

Argument 7

Conclusion 30

TABLE OF AUTHORITIES

Allen v McCurry, 449 US 90 (1980)
pp7, 8

Burt v Abel, 585 f 2d 613 (4th Cir 1978)
p23

Carey v Piphus, 435 US 247 (1978)
p24

City of Riverside v Rivera, 54 USLW 3143, (Aug 28, 1985
p28, 29

Dean v Civiletti, 670 F2d 99 (8th Cir 1982)
p22

Glorer v Johnson, 478 F Supp 1075 (ED Mich 1979) p1, 2, 22

Hensley v Eckerhard, 461 US 424 (1983)
p6, 9 10, 12 22, 23 25, 26 29

Johnson v Snyder, 639 F 2d 316 (6th Cir 1981)
p22

Manzie v Johnson, US DC-ES No. 77-72557
p4,13,15, 16, 17 ,18, 19 20 21
22, 26

McCann v. Coughlin 698 F2d 112 (2d Cir 1983)
p22

Milne v Cavuoto, 653 F2d
80 (2d Cir 1981)
p22

Skoda v Fontani, 646 F 2d 1193 (7th Cir 1981)
p22

United States v Stauffer Chemical Co
464 US 165 (1984)
p8

Statutes:

42 USC §1983

42 USC §1988
p6, 11, 12 21 23, 27

Other:

S Rep (Juidiciary Committee) No. 94-1101,
reprinted in U.S. Code Cong & News 5908
p12

SUMMARY OF ARGMENT

I.

The doctrine of collateral estoppel bars Petitioners from asserting that Respondent is not a prevailing party. In an earlier fee award made to another attorney in this lawsuit, the District Court specifically found that Respondent was the prevailing party. Petitioners made no objection to this finding.

The present fee petition involves the same parties, and controlling law and facts as the earlier fee award. Petitioners had a full and fair opportunity to litigate the issue at the earlier fee petition, yet they chose not to do so do. The doctrine of collateral estoppel now bars Petitioners from challenging Respondent's prevailing status.

II.

There is ample support in the record for the trial court's finding that Respondent was a prevailing party for §1988 purposes. Under the test in Hensley v Eckerhart, 461 US 424 (1983), a party needs only to succeed on any significant issue or to achieve some of the benefit sought in order to be a prevailing party for §1988 purposes.

Respondent did succeed in establishing: that her constitutional rights had been violated, that the Petitioner had knowingly and willfully violated her constitutional right of access to the courts; that Petitioners' claim of eleventh amendment immunity, executive immunity and qualified immunity did not shield them from liability; that Petitioners' violation of Respondent's constitutional rights entitled her to nominal damages.

Petitioners' assertion that a party who receives only nominal damages is not a "prevailing party" contravenes the law and policy of §1988, It is uniformly recognized that an award of nominal damages confers prevailing party status upon the recipient. Consideration of the limited nature of such an award vis-a-vis attorney fee awards properly goes to the extent of the Respondent's success, and hence the amount of the attorney fee - rather than to the prevailing party issue.

III.

Section 1988 specifically vests the district court with discretion in awarding attorney fees. This Court has said in Hensley that in exercising its discretion to determine the amount of an attorney fee award, the district court should consider, inter alia, the extent of the party's success in the litigation.

In this case, the district court expressly awarded Respondent a fee based upon its view of the extent of Respondent's success. In recognition of the fact that the award of nominal damages constituted only a limited success for Respondent, the district court awarded her less then twenty-five percent of the requested attorney fee. Petitioner has referred to nothing which would indicate that the district court abused its discretion in making this fee award. Since there is no indication of abuse of discretion, this Court should decline to review this case.

STATEMENT OF THE CASE

This matter has been conducted in two separate proceedings. Respondent's pro se complaint was intitally consolidated with Glover v Johnson, 478 F Supp 1075 (E D Mich 1979), a class action challenging the conditions of the confinement of female prison inmates at the Detroit House of Corrections (DeHoCo) and the Huron Valley Womens Facility.

The court in Glover held that the educational and vocational programs in the women's facilities were substantially less adequate than those offered in Michigan men's facilities ,that women in these facilities had been denied access and to paralegal education programs which were offered to men, and that the state was prohibited from using a county jail as an overflow facility. Glover, supra, at pp 1102-;1103.

After the Glover proceeding was terminated, a separate hearing was held to determine the issues regarding the adequacy of the law libraries at DeHoCo and at Huron Valley prior to September 29, 1977. The issues in this second proceeding were entirely separate from those determined in Glover. Judge Feikens specifically noted this in the Glover opinion.

> At this hearing, Plaintiffs will be permitted to reintroduce their evidence relating to the conditions of the law library at the Detroit House of Corrections insofar as it related to the denial of their rights at the time - a matter which I specifically do not address in

> this opinion. Defendants, of course, will also be able to meet the issues raised by these proofs. (emphasis added)
>
> Glover, supra at p 1098 nt 21

Respondent retained present counsel to represent her in this second proceeding. In addition, the District Court appointed attorney Charlene Snow to aid Respondent in preparation of her post-trial brief.

In the hearing on June 5 and 7, 1981, Respondent offered extensive evidence in support of her allegation that her constitutional right of access to the courts had been violated due to the deficiencies in the law libraries at DeHoCo and at Huron Valley. Respondent also presented substantial legal argument on the issue of Petitioners' assertions of immunity. The extent of the dispute regarding Petitioners' culpability in violating Respondent's right of access to the courts is highlighted by the fact that twelve of the fifteen pages of Judge Feikens' Opinion

on Damages, dated December 16, 1981, are devoted to establishing Petitioner's liability.

Petitioners consistently held the position throughout the June, 1981 proceeding that the law libraries for female prisoners had been adequate, that Respondent's right of access to the courts had not been violated and that Respondent could maintain no legal claim against Petitioners for damages. The Relief section of Petitioners' Brief in Support of Affirmative Defenses, filed in Manzie v Johnson, USDC-ES No. 77-72557 dated June 16, 1981, states: "Wherefore, for all of the foregoing reasons, Defendants respectfully request this Honorable Court to dismiss with prejudice Plaintiffs' action for damages." (emphasis added).

The District Court ultimately held "that Respondent's constitutional right of access to the courts was knowingly and intentionally violated by both of the individual Defendants in this case." Manzie v Johnson USDC-ES No. 77-72557, Opinion On Damages, December 16,

1981, reprinted at p 21a of Petition for Writ of Certiorari. The Court also held that Petitioners were not shielded from liability due to government immunity, Manzie at pp 11a-17a and that the Petitioners were liable for any damages caused by their violations of Respondent's rights. Manzie, Opinion at p17a

The District Court awarded Respondent a nominal damage award in recognition of the fact that Respondent "suffered humiliation and frustration resulting resulting from the mere denial of rights that she had come to expect, particuarly the right of access to the judicial system." Manzie, Petition at p 23a These determinations were upheld upon appeal Manzie v Johnson, Docket No. 82-1064, November, 1983.

Subsequent to the December 15, 1981 Opinion in Manzie, the district court heard attorney Charlene Snow's motion for attorney fees. Manzie v Johnson, USDC-ES No. 77-72557, Opinion on Motion for Attorney Fees, February 5, 1982. The court awarded attorney Snow the entire amount that she had requested,

$3,482.75, noting that the "award of attorney fees [was] proper in this case since [Respondent] has prevailed on [her] claim.... No objection to this Finding was made by Petitioners". Petition at p 27a-28a.

Respondent subsequently petitioned the District Court for attorney fees for attorney Soble pursuant to 42 USC §1988. Respondent sought $10,868.78 in fees. Judge Feikens determined that Respondent was likewise entitled to fees under §1988 as a prevailing party, but reduced Respondent's fee award to $2,500.00 utilizing the "results obtained" analysis put forth in Hensley v Eckerhart the District Court award was affirmed by the Sixth Circuit on September 11, 1985, Manzie v Johnson, No. 84-1593 September 11, 1985. Petitioners subsequently petitioned this Court for Writ of Certiorari.

I.

PETITIONERS ASSERTION THAT RESPONDENT IS NOT A PREVAILING PARTY FOR §1988 PURPOSES IS BARRED BY COLLATERIAL ESTOPPEL.

Under the doctrine of collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue" in the same or a different action involving the same parties. Allen v McCurry, 449 US 90,94 (1980).

In order for collateral estoppel to act as a bar to the relitigation of an issue, it must first be established that: 1)that the parties involved in the first litigation of the issue are also involved in the relitigation attempt, 2) the issue sought to be relitigated is identical to the previously litigated issue, and 3)there has been no change in controlling facts or legal principles. United States v Stauffer Chemical Co, 464 US 165, 104 S Ct 575, 578 (1984).

In addition "one general limitation the Court has repeatedly recognized is that the

concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a'full and fair opportunity ' to litigate that issue in the earlier case." Allen, 449 US at 95.

The case at bar presents a paradigm collateral estoppel situation. As noted in the Statement of the case, prior to the present attorney fee petition, the District Court awarded attorney fees to Charlene Snow, Respondent's counsel appointed by the court. In awarding a fee for attorney Snow, Judge Feikens specifically determined that Respondent was the prevailing party.

The Opinion stated:

> An award of attorney fees is proper in this case since plaintiffs have prevailed on their claim.
>
> . . . .
>
> No objection is made by opposing counsel.
>
> Petition at 27a-28a

Petitioners are now estopped by this prior determination that Repondent is not a

prevailing party .There is no dispute that all parties to this Petition particpated in the award of attorney fees to attorney Snow; it was and is all part of the same lawsuit. Similarly, the issue for which Petitioners seek review in this Court is precisely the same issue already determined in Respondent's favor by the trial court - that Respondent prevailed on her claim. Likewise, since this is all part of the single lawsuit,there has been no change in the controlling facts of this lawsuit since the award of fees to attorney Snow.

Additionally, there has been no change in the controlling law since Respondent was first found to be a prevailing party. Although this Court decided in Hensley v Eckerhart, 461 US 424 (1983), after the fee award to attorney Snow, Hensley did not represent any change in the law regarding the prevailing party issue; rather Hensley was significant for announcing the "extent of success" analysis in determining the amount of a fee award. The test for prevailing party status set forth in Hensley

was adopted from a 1978 court of appeals case, and was formulated by this Court as being a statement of the existing law regarding this issue. The rule in the Sixth Circuit as set forth in Northcross v Board of Education, 611 F2d 624 (6th Cir 1979), is functionally identical to that set forth in Hensley.

Finally, Petitioners had a full and fair opportunity to raise this issue at the hearing for the award of fees to Snow. Judge Feikens specifically noted, however, that Petitioners made no objection to the finding that Repondent was a prevailing party. Neither did Petitioners seek to appeal or in any other way challenge Respondent's prevailing party status for purposes of the fee award for attorney Snow.

It would be anomalous if Petitioners could concede that Respondent is a prevailing party for the purpose of a fee award to one attorney and subsequently assert that Respondent - the same party in the same action- was not a prevailing party for the purpose of a fee award

to the other attorney in the lawsuit.Simple logic does not permit two conflicting determinations of a single issue between the same parties in one lawsuit. This Court should apply the doctrine of collateral estoppel to hold that Respondent is the prevailing party in this lawsuit, thus entitling her to an award of attorney fees under §1988.

II.

THE TRIAL COURT AND COURT OF APPEALS CORRECTLY HELD THAT RESPONDENT'S SUCCESS IN ESTABLISHING PETITIONER'S VIOLATION OF HER CONSTITUTIONAL RIGHTS ENTITLED HER TO ATTORNEY FEES AS A PREVAILING PARTY UNDER 42 USC §1988s4

There is no dispute that the applicable test for determining whether a party has "prevailed" under 42 USC §1988 for attorney fee purposes in that set forth by the Court in Hensley,v Echerkart, 461 US 424 433 (1983)

> A typical formulation is that Plaintiffs may be considered prevailing parties for attorney's fees purposes if they succeed on any significant issue in this litigation which achieves some of the benefit the parties sought in bringing the suit.

This test emphasizes the fact that a party need not succeed on all issues litigated or achieve all of the benefits desired in order to be a prevailing party for attorney fee purposes. This formultion is consistent with the intent of the legislative in enacting §1988.

> All of these civil rights laws depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate [such rights].
>
> In several hearings held over a period of years, the [Senate Judiciary] Committee has found that fee awards are essential if the federal statutes to which S.2278 applies are to be fully enforced. We find that the effect of such fee awards are ancillary and incident to securing compliance with these laws, and that fee awards are an integral part of the remedies necessary to obtain such complaince.
>
> S. Rep. (Judiciary reprinted in, U.S. Code Cong. & Ad News 5908, 5910-5913

On February 5, 1982,, the District Court determined that Respondent was the prevailing

party. In an opinion on a Motion for an Award of Attorney Fees to Charlene Snow, Respondent's counsel appointed by the court, a determination of prevailing party status was made:

> A hearing was held on June 5, 1981, to determine the library resources available to the individual plaintiffs during their incarceration and to assess their damages, if any, from the alleged inadequacies. In an opinion issued on December 17, 1981, I found that the law library provided to women prisoners at the Detroit House of Corrections was not in conformity with constitutional standards.
>
> An award of attorney fees is proper in this case since plaintiffs have prevailed on their claim.
>
> No objection is made by opposing counsel.

At the June, 1981 hearing, Respondent addressed three issues: 1)that the law libraries at DeHoCo and at Huron Valley prior to September 29, 1977 were in fact inadequate in violation of Respondent's constitutional right of access to the courts, 2) that

Petitioners were not immune from liability for this constitutional violation under any of the three immunity theories advanced by them, and 3) that the constitutional violations were a cause of Respondent's damages.

The trial court's December, 1981 opinion on damages most accurately reflects all of the issues which were resolved in Respondent's favor at the June, 1981 hearing. It is important to read the trial court's opinion in its entirety. A complete reading of the opinion will reveal the full extent of the disputed issues that were resolved in Respondent's favor at the June, 1981 hearings. Both from an evidentiary and a legal standpoint, the Petitioners strongly opposed Respondents' attempt to establish the constitutional violation and the resultant liability for damages. Petitioners did not stipulate to a single fact nor did they fail to raise any defense available that would have exonerated their conduct.

At the outset of the opinion, the trial court noted the purpose of the June hearing:

> A hearing was held on June 5, 1981, to determine the library resources available to the individual plaintiffs during their incarcertation and to assess their damages, if any, from the alleged inadequacies.
>
> Petition at p 6a
> (emphasis added)

Thus, contrary to the Petitioners' assertion that the only issue at the June, 1981 hearing was the amount of Respondent's compensable injury, the trial court specifically noted that Respondent had to establish the adequacy of the law library, and the resultant constitution violation, before damages could be determined.

In order to establish the constitutional violation, Plaintiffs offered the testimony of several witnesses. James Neuhard, Director for the Michigan State Appellate Defender's Office, testified that he had personally visited DeHoCo and found it to competely lack any sort of law

library. Perry Johnson, a Defendant in this case, admitted that although he had developed a checklist for the mininum requirements of an adequate law library under the law in 1973, he knew that DeHoCo did not meet those requirements. Charles Wolf, Assistant State Law Librarian, stated that he had personally observed unopened cartons of law books at both DeHoCo and in 1976 at Huron Valley; Mr. Wolf's observations at Huron Valley were confirmed by the testimony of Gloria Richardson, Superintendent of Huron Valley.

Only after Respondent had presented her evidence on this issue did the trial court make its finding that the law library had been in fact in inadequate. The trial court specifically noted that this finding was based on evidence adduced at the June, 1981 hearing when it stated:

> I find that the law library was inadequate as it existed at DeHoCo through the period of the move to Huron Valley. The testimony at the hearing clearly demonstrates that Johnson knew

> of the need to provide adequate law library facilities to prisoners.
>
> . . .
>
> I also find that the law library provided to women prisoners between December, 1975 and September 29, 1977, was not in conformity with the constitutional standards articulated beginning with Gilmore . . . This is particularly intolerable in light of the admission that law libraries were provided to male prisoners . . . and in view of the checklist generated internally by the department in 1973.
>
> Petition at p10A-11A

Similarly, Respondent offered substantial legal argument at the hearing to defeat Petitioners' assertions of immunity from liability. The court's opinion notes that Petitioners claimed "three affirmative defenses to [Respondent's] charges: Eleventh Amendment immunity, executive immunity and qualified immunity." Petition at p 12a.

With regard to Eleventh Amendment immunity, Judge Feikens noted that it was "the State's

position that there [was] no evidence that its officials, namely Johnson and Richardson, grossly abused the lawful powers of their office . . Petition at p 13. " Again, as this passage indicates, the resolution of the Eleventh Amentment issue in Respondent's favor required Respondent to offer evidence at the hearing.

Respondent also had to offer evidence to prevail on her arguments on the executive and qualified immunity issues. With respect to the executive immunity issue, the trial court noted that "the degree of immunity is limited if the official knew or should have known that his actions would violate the constitutional rights of the individual or if the action was malicious in intent." Petition at p16a. Thus, Respondent had to offer proofs as to the issues of knowledge and of malicious intent.

Knowledge was also at issue in defeating Petititioners' qualified immunity assertion. The court's opinion clearly indicated that its determination in Respondent's favor was based

on evidence adduced at trial.

> [If] the right allegedly infringed by Defendants was clearly established at the time of their challenged conduct, if they knew or should have known of that right, and if they knew or should have known that their conduct violated the constitutional norm, the good faith immunity defense would not be applicable.
>
> [citation omitted]

I find that the conduct of the defendants in this case cannot withstand the test for good faith immunity.

Petition at p 16a

The opinion then reviewed the evidence adduced at trial and stated:

> Based on these facts, I must conclude that the conduct of the Department officers, acting in their individual capacity, was undertaken with full knowledge of the right of the women prisoners to access to a law library and in willful violation thereof.
>
> Petition at p 17a.

The trial court ultimately held that the

law libraries at the two correctional institutions prior to September 29, 1977, had been "for all practical purposes, nonexistent." Petition at p.11a The court further found that beause of the ineadequacy of the law libraries, constitutional right of access to the courts was knowingly and intentionally violated by both the individual defendants in this case." Petition at p21a

It was only after the court reviewed all of the evidence and found Peitioners liable that it addressed the issue of damages.

> Having determined that there is liability on the part of the defendants. and finding that there are no applicable defenses. . . I must now determine the issue of damges.
>
> Petition at p 17a

In deciding to award nominal damges to Respondent, Judge Feikens quoted from another district court opinion, noting that

[In] most cases when a public denied rights that the citizens felt were secure under our Constitution, the result is hurt feelings, outrage and embarrassment or humiliation and

nominal damages may be awarded for these natural consequences of lawless action by state officials. Petition at p 22a

The court further noted that nominal damages are specifically appropriate in this case because Respondents "were denied their constitutional rights" Petition at p 23a and they "suffered humiliation and frustration resulting from mere denial of rights they had come to expect, particularly the right of access to the judical system." Id.

Petitioners now contend that Respondent was not a prevailing party for the purposes of §1988 attorney fees. This contention totally ignores Respondent's success on the substantial factual and legal issues involved in establishing Petitioners' liability. Respondent agrees that certain other constitutional rights were vindicated in Glover v Johnson. However, the issues determined in Respondent's favor in Manzie, as noted above, had been specifically reserved by the District

Court for determination at the June, 1981 hearings.

Given the Respondents' clear status as a prevailing party in the June, 1981 Manzie hearing, there is no reason to grant certiorari to review this case as it presently stands. There is no dispute that the Sixth Circuit Court of Appeals based its affirmance of the District Court's award of fees on the test set forth by this court in Hensley v Eckerhart. There is also no dispute that the Hensley test is the controling rule of law in this area.

Furthermore, it is uniformly recognized among the circuits that in §1988 cases an award of nominal damages entitles a party to attorney fees as a prevailing party. See e g. Dean v Civiletti, 670 F 2d 99 (8th Cir 1982); Milne v Cavvoto, 653 F 2d 80 (2d Cir 1981); Johnson v Snyder, 639 F 2d 316 (6th Cir 1981); Skoda v Fontani, 646 F 2d 1193 (7th Cir 1981; Burt v Abel 585 F 2d 613 (4th Cir 1978).

This rule evinces a recognition of the important role of the trial court's statutorily

vested discretion in §1988 cases. The failure to obtain compensatory damages does not, in and of itself, strip Respondent of prevailing party status; it is, rather, a factor to be considered by the trial court in awarding an attorney fee that is reflective of the degree of success, as required by this Court in Hensley. As is more fully demonstrated in Part II, below, the fee award in this case reflects the District Court's judgment on the degree of Respondent's success.

The rule that the amount of a damage award is more properly reflected in the determination of the degree of success than in the prevailing party determination is necessary to effect the purpose of §1988. As noted by the second circuit:

> The legislative history of §1988 indicates a strong Congressional intent to encourage private enforcement of the nation's civil rights statutes and to award attorney's fees to prevailing parties.
>
> If private citizens are to be able to assert their civil

rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what if costs them to vindicate these rights in court . . If the cost of private enforcement becomes too great there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases.

S. Rep. No. 1011, 94th Cong., 2d Sess. 2, 6 (1976) U.S. Code Cong. & Ad. News 5908, 5910, 5913.

The policy underlying the statute is to encourage litigants to assume the role of a private Attorney General. This policy may be served by granting a feee request even where a plaintiff is unable to prove actual damages resulting from his constitutional deprivation. The Supreme Court's decision in Carey v Phiphus, supra, makes clear that party may prove a violation of his due process rights and still be unable to show the requisite causation required for an award of compensatory damages. The fact that a plaintiff is awarded only nominal damages does, not

indicate that he has been unsuccessful or has not prevailed on his claim.

McCann v Coughlin, (Cir 1983)

III.

THE DISTRICT COURT PROPERLY CONSIDERED THE EXTENT OF RESPONDENT'S SUCCESS, AS REQUIRED BY HENSLEY v ECKERHART IN REDUCING RESPONDENT'S FEE AWARD BY APPROXIMNATELY 77% FROM THE AMOUNT REQUESTED.

Petitioners acknowledge that the Hensley rule controls this case. Under this rule, the normal fee award is the product of the hours that counsel spend on the case and a reasonable hourly rate. Hensley, , 461 US at 433. Pursuant to this formula, counsel for Respondent submitted a fee petition for 86.95 hours, based on contemporaneously maintained records, at $125.00 per hour, resulting in a total requested fee award of $10,868.78, plus $287.00 in costs. Respondent did appeal the nominal damage award to the Sixth Circuit;however, no fee request was submitted

for the hours spent on the appeal at it was unsuccessful.

There was no objection to the number of hours spent on this litigation, nor on the hourly rate requested. The only objection raised to Plaintiff's fee was raised was that Plaintiff should not receive the full fee requested pursuant to the nalysis in Hensley.

Upon hearing Plaintiff's fee petition, Judge Feikens reaffirmed "that Miss Manzie was the prevailing party . . ." and "that as the prevailing party she is entitled to an award of attorney fees . . . "transcript of June 5, 1984, Manzie v Johnson, USDC-ES No. 77 72557, at p 23 The court then went on, applying the Hensley analysis, to determine what it felt to be a reasonable fee amount based on the degree of Miss Manzie's success: "And it seems to me that what would be reasonable under all of the circumstances is to award you an attorney fee of [sic] $2,500.00. and costs in the amount of $278.00." Transcript of June 5, 1984 hearing at p 24.

The $2,500.00 fee ultimately awarded by the district court represented a 77% reduction from the amount originally requested by Respondent. Judge Feikens reduced the fee award to reflect the extent of Respondent's success in the case and to comport with proper billing judgment.

Respondent is unable to determine the basis upon which Petitioners now assert that this fee award is excessive. Respondent was the prevailing party in the case, thus entitling her to a fee award. A verdict of nominal damages, as demonstrated above, supports an award of attorney fees. Judge Feiken's very substantial reduction in Respondent's fee represents an exercise of his statutory discretion under §1988; Petitioners have shown nothing in the record which would indicate an abuse of such discretion.

The concerns set forth in City of Riverside v Rivera, 54 USLW 3143 (August 10, 1985), support the fee award in this case. Justice Rehnquist, referring to City of

McKeesport v Cunningham, supports the view that a fee award should be at least partially proportional to the amount of monetary relief awarded in the underlying case, and that the award should comport with normal billing pratices in regular fee-generating cases. In the present case, Judge Feikens specifically considered the a ount of Respondent's monetary relief and proper billing procedures in determing the amount of the fee award. On pages 23-24 of the Transcript of the 1984 attorney fee hearing, the court stated "And to me, Mr. Soble, it seems to me that there has to be a relationship between the amount billed and the result obtained ." Additionally, the court noted that billing judgment should be a factor in determining the amount of a fee award. On page 19 of the transcript, the court stated: "and you know -- I know and and you know becuase billing is, I am sure, one of the difficult things that you encounter in your office. --I know when I was in the practice of

law , that was always a hard thing to do, was to determine what the bill should be in given stiuations."

The approach taken by the District Court is entirely consistent with the "extent of success" analysis in Hensley" and the concerns expressed by Justice Rehnquist in Rivera. The district court thus fully considered all factors that are a a part of the fee award determination. Since Petitioners have shown nothing which would indicate an abuse of discretion by the district court in applying these factors, this Court should decline to review this matter.

CONCLUSION

For all of the foregoing reasons, this Court should decline to issue a Writ of Certiorari to the Sixth Circuit in this matter.

Respectfully submitted,

GOODMAN, EDEN, MILLENDER & BEDROSIAN

BY: _____
RICHARD A. SOBLE (P20766)
3000 Cadillac Tower
Detroit, Michigan 48226
965-0050